

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary  
Immediate Suspension of the Family  
Child Care License of Shirell Kerney To  
Provide Family Day Care

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on July 28, 2011, at the Minnesota Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55021. The OAH record closed upon receipt of the final exhibit on August 2, 2011.

Frederic S. Stephens, Assistant Hennepin County Attorney, Minneapolis, Minnesota, appeared at the hearing as attorney for the Minnesota Department of Human Services (the "Department") and the Hennepin County Human Services and Public Health Department (the "County"). Mark G. Ohnstad, Thomsen♦Nybeck, Bloomington, Minnesota, appeared at the hearing as attorney for Ms. Shirell Kerney, (the "Licensee").

**STATEMENT OF THE ISSUE**

The issue is whether or not there is reasonable cause to believe that the health, safety or rights of children in Ms. Kerney's care are at imminent risk of harm at this time.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Ms. Kerney (also herein "Licensee") has been licensed to provide family child care services for 13 years and had done so in her home in Bloomington, Minnesota (the "home") until June 10, 2011, when her license was temporarily suspended.<sup>1</sup>

2. Licensee's program is available to care for children seven days a week, 24 hours a day, and operates under a Class A license.<sup>2</sup>

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<sup>1</sup> Ex. 1; Testimony of Shirell Kerney.

<sup>2</sup> Ex.7; Test. of S. Kerney and Timothy Hennessey, Senior Social Worker and Quality Assurance Specialist for Hennepin County Human Services and Public Health Department

3. Licensee has three adult children.<sup>3</sup> Her daughter, Ms. Traci Kerney, works for Licensee part-time evenings and nights, after her full-time career position at a psychology clinic.<sup>4</sup> Ms. Traci Kerney's fiancé, Mr. Delancy (D-Low) Donley, also works part-time for Licensee.<sup>5</sup>

4. One of Licensee's sons, Mr. William Thomas, lives in East St. Louis, Missouri.<sup>6</sup>

5. Licensee's other son, Mr. Jirell Thomas, lists Licensee's home as his residence on all "legal" documents, including his driver's license, criminal and probation records.<sup>7</sup> He continues to receive all of his mail at Licensee's home.<sup>8</sup> He and Licensee claim that he has physically resided in various other locations since 2005.<sup>9</sup>

6. Among a number of other convictions for various offences, including assault and drug convictions, on December 4, 2006, Mr. Jirell Thomas was convicted of aiding and abetting aggravated robbery in the first degree, a felony, under Minn. Stat. § 609.245, subd. 1.<sup>10</sup>

7. Among a number of other convictions for various offences, including domestic assault and drug convictions, on August 8, 2003, Mr. William Thomas was convicted for aiding and abetting simple robbery under Minn. Stat. § 609.24.<sup>11</sup>

8. During the evening hours of June 7, 2011, Licensee, her daughter and Mr. Donley were caring for six children in Licensee's home.<sup>12</sup> The home is a ranch type, one floor house that has a below-ground basement. The front of the home has a two car garage door. Adjacent to the garage door is an entrance door to the garage. Adjacent to the garage door entrances is a chain-link fence that surrounds a front yard. There is a main front door to the house that is inside the chain link fence. The garage doors and driveway are outside of the fence.<sup>13</sup>

9. Between 7:00 and 8:00 p.m. that evening, the four youngest children in care (ages two, three, four and five years old) were in the front living room of the home.<sup>14</sup> The two other children, ages seven and eleven, were in the basement.<sup>15</sup> The

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<sup>3</sup> Test. of S. Kerney.

<sup>4</sup> Test. of Traci Kerney.

<sup>5</sup> *Id.*, Test. of Delancy Donley.

<sup>6</sup> Test. of William Thomas.

<sup>7</sup> Test. of Jirell Thomas; Exs. 10, 13.

<sup>8</sup> *Id.*; Test. of S. Kerney.

<sup>9</sup> *Id.*

<sup>10</sup> Ex. 13.

<sup>11</sup> *Id.*

<sup>12</sup> Test. of S. Kerney, T. Kerney and D. Donley.

<sup>13</sup> *Id.*; Ex. 17.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

street, yard and most of the driveway can be seen from the front living room window.<sup>16</sup> The street, yard and driveway cannot be seen from the basement.<sup>17</sup>

10. Early in the evening of June 7, 2011, Mr. Jirell Thomas drove his car to the bus station in Minneapolis and picked up his brother, Mr. William Thomas, who arrived from East. St. Louis. Their intention was to make a surprise stop at Licensee's home so she could come outside and visit with her sons before they went elsewhere for the evening.<sup>18</sup>

11. During the trip to Licensee's home Mr. William Thomas called Licensee on his cell phone and told her that he was on his way to say hello to her and then go visit his two children. Thereafter, unobserved by Mr. Jirell Thomas, Mr. William Thomas placed his new Android smart phone on the center console of the vehicle. When they arrived at Licensee's home between 7:00 and 8:00 p.m., Mr. Jirell Thomas parked the car on the street and shifted the lever in the center console into park, whereupon the Android phone's screen was cracked during that procedure.<sup>19</sup>

12. An argument was started by Mr. William Thomas, demanding that his brother immediately take him to get another new phone and pay for it immediately. Mr. Jirell Thomas offered to give his brother his phone until a replacement phone could be had. Although he did not have the funds to pay for a replacement phone immediately, Mr. Jirell Thomas offered to pay his brother in installments.<sup>20</sup>

13. Mr. William Thomas refused to accept his brother's offers and continued to escalate the argument and its volume as the two walked up the driveway towards Licensee's garage door.<sup>21</sup> Mr. William Thomas was the verbal aggressor, refused to be reasonable, and let his anger get the best of him.<sup>22</sup>

14. As the brothers came up the driveway, Licensee, Ms. Traci Kerney and Mr. Donley were together in the kitchen. The doorbell at the garage door was rung, alerting Licensee and her daughter that the brothers were there.<sup>23</sup>

15. Licensee went outside first, learned what the argument was about and tried to separate her sons and calm down Mr. William Thomas, even offering to replace the phone herself. She warned them that they needed to stop arguing because she had children in care and that if they did not stop they would have to leave.<sup>24</sup>

16. Licensee went back in the house to the kitchen, frustrated, commented to her daughter and Mr. Donley that if the brothers did not stop arguing, that she was

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<sup>16</sup> Ex. 17.

<sup>17</sup> *Id.*; Test. of S. Kerney.

<sup>18</sup> Test. of J. Thomas and W. Thomas.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Test. of W. Thomas.

<sup>23</sup> Test. of T. Kerney and S. Kerney.

<sup>24</sup> *Id.*; Test. of J. Thomas and W. Thomas.

going to get her gun and call the police.<sup>25</sup> This conversation would be able to be heard by the two children in the basement.<sup>26</sup>

17. Licensee has two handguns: a broken .22 caliber pocket gun and an operable .38 caliber revolver which are kept in a combination locked safe in Licensee's bedroom, where they were at all times on June 7, 2011.<sup>27</sup>

18. Thereafter, while Licensee began getting the younger children ready for bed, both Ms. Traci Kerney and Mr. Donley went outside and attempted to de-escalate the argument, without success.<sup>28</sup>

19. Mr. Kerney, Licensee's husband, had been lying on a bed in a bedroom, when, on surveillance monitors, he observed people in the driveway. He got up and went into the living room where the four younger children were located. He could not hear the argument from the living room.<sup>29</sup>

20. Mr. Kerney went outside to see what was going on outside and learned about the dispute. He went back inside the home.<sup>30</sup>

21. Licensee went outside again and told the brothers that if they did not stop arguing and leave that she was going to go inside, get her gun and call the police.<sup>31</sup> Licensee then returned to the kitchen and asked Mr. Donley to take her car keys, go outside and take Mr. William Thomas to wherever he was going. Mr. Donley drove Mr. William Thomas away.<sup>32</sup>

22. On July 8, 2011 the Bloomington Police Department received a report that the seven-year-old child in Licensee's care was frightened by an incident at Licensee's day care on June 7, 2007. The police report states that there was a disturbance inside Licensee's home between Licensee's two sons: Jirell and D-Low. The report goes on to state that:

- a. the seven-year-old child and that child's four year old brother heard Jirell say to D-Low; "I'm gonna shoot this nigger because he keeps messing with my drugs and money;" and
- b. Jirell went to the attic and grabbed a black gun ("like the police gun"), puts the gun to his brother D-Low's head; and

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<sup>25</sup> Test. of S. Kerney, T. Kerney, and D. Donley.

<sup>26</sup> Test. of S. Kerney.

<sup>27</sup> *Id.*

<sup>28</sup> Test. of S. Kerney, T. Kerney, and D. Donley.

<sup>29</sup> Test. of Frederick Kerney.

<sup>30</sup> *Id.*

<sup>31</sup> Test. of S. Kerney, J. Thomas and W. Thomas.

<sup>32</sup> *Id.*

- c. Licensee and Mr. Kerney got Jirell away from D-Low, took him to another bedroom where Jirell put the gun to his own head and said he was going to shoot himself; and
- d. Kerney was able to get the gun away from Jirell; and
- e. After the gun was taken away the brothers started to fight with each other inside the house and then outside the house.<sup>33</sup>

23. The seven-year-old child was frightened by the events of June 7, 2011.<sup>34</sup> Neither she nor her siblings were returned to Licensee's day care.<sup>35</sup>

24. Mr. Donley is unrelated to either Mr. Jirell Thomas or Mr. William Thomas. Licensee's home does not have an attic.<sup>36</sup>

25. The County opened a Child Protection ("CP") investigation on June 9, 2011.<sup>37</sup> The CP investigator visited with the two child witnesses and their mother at 11:15 a.m. The CP investigator interviewed Licensee at 11:45 a.m. Licensee denied that the events of June 7, 2011 occurred as outlined in the police report. She admitted that her sons had a verbal argument and that she had told her sons that if they did not take their argument elsewhere that she would get her gun and call the police.<sup>38</sup>

26. The CP investigator attempted to interview the other four children on or after June 17, 2011, but their parents either declined to allow the interview or told them that they had spoken with them and that the children reported that nothing unusual had happened on June 7, 2011 at Licensee's home.<sup>39</sup>

27. The June 9, 2011 CP Assessment Summary states that no child is in imminent danger.<sup>40</sup>

## Procedural Findings

28. On June 10, 2011 the County family child care licenser, relying entirely on the police reports and CP investigator, recommended to the Department that Ms. Kerney's family child care license be immediately suspended.<sup>41</sup>

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<sup>33</sup> Exs. 6, 8, 9. Exhibit 9 purports to contain the complete police interviews of the five and seven year old children. However, the Exhibit 9 offered and accepted into evidence does not contain the statement referenced above as subparagraph a. above; nor does it contain a recitation by either child of the events specified in subparagraphs c. or d.

<sup>34</sup> *Id.*

<sup>35</sup> Test. of S. Kerney.

<sup>36</sup> Ex. 17.

<sup>37</sup> Ex. 10.

<sup>38</sup> *Id.* at page 3 of 23.

<sup>39</sup> Ex. 10; Test. of Greg J. Hrcirik, County Child Protection Social Worker and Investigator.

<sup>40</sup> Ex. 10, page 1 of 9.

<sup>41</sup> Ex. 11; Test. of T. Hennessey.

29. On June 10, 2011 the Department issued an Order of Temporary Immediate Suspension (the "Order") of Licensee's family child care license.<sup>42</sup>

30. On June 13, 2011 Licensee filed a timely appeal from the Order of Temporary Immediate Suspension and requested an appeal hearing pursuant to Minn. Stat. § 245A.07, subd. 2a.<sup>43</sup>

31. On June 15, 2011 the Department executed a Notice of and Order for Hearing, scheduling a contested case hearing for July 11, 2011.<sup>44</sup> The hearing was continued due to the shutdown of Minnesota State government. The parties agreed to proceed with the hearing on July 28, 2011.

32. On June 27, 2011 the County issued a maltreatment determination letter to Licensee. The maltreatment determination was based on neglect, pursuant to Minn. Stat. § 626.556, subdivision 10, paragraphs (h), (i), and (j).<sup>45</sup>

33. On June 28, 2011 the Administrative Law Judge issued a Protective Order, which was served upon the parties that day.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subds. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. The purpose of family child care licensure statutes and rules is to protect the care, health and safety of children.<sup>46</sup>

### **Temporary Immediate Suspension Standards and Reasonable Cause**

5. Minn. Stat. § 245A.07, subd. 2. provides, in applicable part:

"If the license holder's actions . . . or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health,

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<sup>42</sup> Ex. 1; Notice and Order for Hearing.

<sup>43</sup> Notice and Order for Hearing.

<sup>44</sup> Notice and Order for Hearing.

<sup>45</sup> Ex. 12; Test. of T. Hennessey.

<sup>46</sup> Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325.

safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.”

6. In order to maintain a temporary immediate suspension under Minn. Stat. § 245A.07, subd. 2, the Department must show that reasonable cause exists to believe that Licensee’s failure to comply with applicable law or rule or the actions of other individuals, poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

7. At hearing, the burden of proof is on the Department to show that reasonable cause exists to believe that the license holder’s actions or failure to comply with applicable law or rule, the actions of another, or the conditions in the program, poses, at the time of the hearing, an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>47</sup>

8. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>48</sup>

### **Family Child Care Law and Rules Alleged to Have Been Violated**

9. Minn. Stat. § 245A.04 regarding **APPLICATION PROCEDURES** provides in relevant part as follows:

Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in chapter 245C.

10. Minn. Stat. § 245C.03 regarding **BACKGROUND STUDY; INDIVIDUALS TO BE STUDIED**, provides in relevant part as follows:

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<sup>47</sup> Minn. Stat. 245A.07, subd. 2a.

<sup>48</sup> *Id.*

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study on:

...

(2) an individual age 13 and over living in the household where the licensed program will be provided;

(3) current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;

...

(6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children . . . receiving services from a program, when the commissioner has reasonable cause; . . .

11. Minn. Stat. § 245C.15, regarding **DISQUALIFYING CRIMES OR CONDUCT**, provides in applicable part:

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of the level of the offense, the individual has committed any of the following offenses: sections . . . 609.245 (aggravated robbery); . . .

Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: . . . 609.24 (simple robbery). . . .

(b) An individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.. . .

12. Minn. R. 9502.0395 regarding **BEHAVIOR GUIDANCE** provides in relevant part as follows:

Subp. 2. **Standards.** The following shall apply to all caregivers when guiding behavior in children.

A. No child shall be subject to . . . emotional abuse. "Emotional abuse" means the infliction of verbal or psychological abuse on a child by a caregiver. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, derogatory remarks about the child or child's family,



and **threats which** threaten, humiliate, or **frighten the child** . . . .  
(emphasis added)

13. Minn. R. 9502.0435 regarding **SANITATION AND HEALTH** provides in relevant part as follows:

Subp. 5. **Firearms.** All firearms must be unloaded and inaccessible to children. Ammunition and firearms must be stored in separate locked areas.

### **Disqualified Individuals**

14. Mr. Jirell Thomas' conviction for aiding and abetting aggravated robbery permanently disqualifies him from direct contact with the children in Licensee's day care, pursuant to Minn. Stat. §§ 245C.14 and 245C.15.

15. Mr. William Thomas' conviction for aiding and abetting simple robbery disqualifies him from direct contact with the children in Licensee's day care for 15 years, pursuant to Minn. Stat. §§ 245C.14 and 245C.15.

### **No Violations Found**

16. Licensee's firearms were unloaded, locked in a safe inaccessible to children. Licensee's ammunition was locked in a cabinet separate from the safe and was inaccessible to children. Licensee did not violate Minn. R. 9502.0435.

### **Violation Found**

17. Licensee violated Minn. R. 9502.0395 on June 7, 2011 when she verbally threatened to get her gun to break up the argument between her disqualified sons and frightened two children in her care.

### **Reasonable Cause Conclusions**

18. When the Order was issued on June 10, 2011, there were specific articulable facts and circumstances indicating that a permanently disqualified individual, Mr. Jirell Thomas, was living in Licensee's home. This provided the Department with a reasonable suspicion to believe that all of the children in Ms. Kerney's care were at imminent risk of harm. Those facts and circumstances were unchanged on the date of the hearing.

19. Licensee's threats, overheard by children, to get a gun in order to remove a disqualified individual from the premises were sufficient to provide the Department with a reasonable suspicion to believe that all of the children in Ms. Kerney's care were at imminent risk of harm.

20. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

21. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

- 1) The temporary immediate suspension of the family day care license of Shirell Kerney be continued; and
- 2) The June 28, 2011 Protective Order of the Administrative Law Judge shall remain in effect.

Dated: August 16, 2011

s/M. Kevin Snell

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M. Kevin Snell

Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

### **NOTICES**

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

### **Burden of Proof**

During an expedited hearing regarding a temporary immediate suspension, the Commissioner of Human Services is not required to prove that actions by individuals or violations actually occurred. Instead, at this stage, the Commissioner must only present reliable oral testimony and/or reliable documentary evidence sufficient to prove that there is reasonable cause to believe that the health, safety or rights of children in the Licensees' care are at imminent risk. In this type of proceeding "reasonable cause" is defined as the existence of specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that the health, safety or rights of children in the Licensees' care are at imminent risk.<sup>49</sup> This is a recent<sup>50</sup> and very modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying charges, facts and circumstances.

The Administrative Law Judge, at this stage of the process, is not required to assess the relative credibility of conflicting testimony, but rather is to determine whether there is enough evidence to maintain the suspension. In this case, there was significant conflicting testimony regarding certain events. However, the resolution of whether or not those events occurred is not necessary for the decision in this proceeding.

### **Articulable Facts That Establish a Reasonable Suspicion**

There is no dispute about the two factual circumstances that are material to the decision in this matter. First, Licensee's son, Mr. Jirell Thomas, is a disqualified individual. Disqualified individuals are not allowed to reside in any home where a licensed family child care business is being operated. Mr. Thomas testified that he has at all times maintained Licensee's home as his residence for "legal" purposes. He does claim that he does not and has not physically resided there. However, Licensee's address currently appears on Mr. Thomas' driver's license as his home. He continues to have all of his mail delivered to Licensee's home, from which he retrieves it in person. Licensee's address appears as his residence for the Department of Corrections, for the purpose of his current period of probation. All documentary evidence suggests that Mr. Thomas resides at Licensee's home. No documentary evidence suggests that he resides elsewhere. These facts are sufficient to allow a reasonable, prudent person to suspect that Mr. Thomas resides in Licensee's home. Where Mr. Thomas actually resides is a factual determination for a future licensing or maltreatment appeal proceeding, if there is one.

Second, the fact that Licensee felt the argument between her sons (both with criminal records involving threats of violence) was serious enough that she felt the need to orally threaten them, twice, that she was going to get her .38 caliber handgun and call the police, suggests a level of seriousness that would lead a reasonable, prudent

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<sup>49</sup> Conclusion 7; Laws 2010, Ch. 329, sec. 7.

<sup>50</sup> *Id.*

person to suspect that day care children could be exposed to a risk of gunfire. It is undisputed that a seven-year-old child and that child's younger sibling were frightened enough by the events of June 7, 2011 that they did not want to return to Licensee's family child care, and, in fact, were not returned there. The evidence suggests that, at a minimum, the seven and five-year-old children were frightened when they heard Licensee tell her daughter and future son-in-law that she was going to get her gun and call the police in order to deal with her sons who were arguing outside.

The determination of whether or not the other events alleged by the seven-year-old child, involving Mr. Jirell Thomas and Mr. Delancy Donley or Mr. William Thomas, actually occurred is not necessary in this proceeding. A future proceeding will give the parties the opportunity to fully examine whether or not the seven-year-old child's version of the other events occurred at all, and if they did occur, whether they occurred on June 7, 2011 or another day.

Due to the combination of the foregoing factors, the Administrative Law Judge cannot determine that the Department failed to show reasonable cause for its actions. The evidence indicates that there remains a reasonable suspicion that there is a risk of imminent harm to children in Licensee's care. Actual harm is not required in these situations. The Administrative Law Judge finds that the Commissioner has reasonable cause to continue the suspension until such time as:

- 1) the Licensee has proved to the Commissioner that Mr. Jirell Thomas does not and will not reside at her day care residence; and
- 2) Licensee has articulated to the Commissioner that she will not again threaten the use of a firearm in the presence of the children in her care.

**M. K. S.**